IN THE COUNCIL.

TUESDAY, April 11.

The Council met at 2 P.M.: minutes read and approved.

A petition was presented from Dunbar & Co., asking that they be allowed to renumber the houses and provide street signs. The petition was endorsed by a large number of local firms. Referred to the Committee on Miscellaneous Petitions.

Mr. Brown reported, for the Judiciary Committee, finding that the ex-queen was entitled to no rents between January 1st and 17th, as she had collected certain rents in advance, which would be an offset. As to back rents, Mr. Brown held that she was entitled to them.

The Attorney-General was not of that opinion. It was just the same as though the Queen had died on January 7. It had always been the practice for each sovereign to take whatever rents were collected during his incumbency.

The matter was re-referred to the Judiciary Committee.

Mr. Damon read the weekly financial statement of the Minister of Finance. It was received and placed on file.

Mr. Damon also presented the report of the Finance Committee. It was adopted. An amendment to the Tax law, recommended by the Finance Committee, was referred to the Judiciary Committee to draft a bill.

The Attorney-General presented two bills having for their object the correction of two clerical errors in the Tax law of 1892.

Referred to the Judiciary Committee.

Mr. Emmeluth drew attention to the fact that the Holomua was being published without the name of any responsible editor.

The matter was referred to the Judiciary Committee.

Mr. Allen presented a resolution recommending the delivery of certain feather cloaks, kahilis and other Hawaiian relics to the Bishop Museum, for care and exhibition. Mr. Allen said they were now not properly cared for.

The resolution was adopted.

Mr. Allen said there was a great deal of silver in the Palace which the custodian, Mr. Greene, thought was not safe.

President Dole drew attention to the fact that there should be an amendment to the Postal Savings Bank law permitting disclosures as to deposits in case of litigation.

The matter was referred to the Judiciary Committee.

Col. Soper's report was read.

Attorney-General Smith introduced a resolution recommending that the sum of $1173.75 be appropriated to defray unpaid bills of expenses of special election.

Referred to the Finance Committee.

President Dole stated that Mr. C. A. Brown had made a claim against the government for payment of his salary as assessor during the time of Mr. C. N. Spencer's incumbency.

A motion was made and carried that Mr. Brown be left to establish his claim in Court.

The Attorney-General presented a bill giving certain district magistrates more jurisdiction.

Referred to the Judiciary Committee.

Mr. Emmeluth inquired whether the principle of a resolution lately adopted had been followed and whether the list of names of friends of the government had been exhausted before proceeding to others. He understood that Dr. Miner had been appointed prison physician, and Mr. McGurn had also been given an appointment at the jail. Government officers should be informed of the wishes of the Council in this matter, and the new Marshal should be informed. The principle had not been recognized in these two appointments. Dr. Miner had removed himself and family on the 17th to Judge Widemann's.

Mr. Tenney said Dr. Miner had been visiting at his house during the late war. His wife was timid and nervous, and so he had taken her at her request to Judge Widemann's with his child, and came back himself.

The Attorney-General said he had supposed that Dr. Miner was as good a friend of the Government as any physician here. He thought those who stated the contrary were in error.

Mr. Tenney drew attention to the fact that Dr. Miner had a very large practice, which he could not well leave.

Mr. Morgan said he knew from personal experience that Dr. Miner had always been opposed to the Reform Party.

President Dole—I understand that Dr. Miner is going away in a few weeks.

Mr. Emmeluth—And I understand he has a brother-in-law ready to take his place.

Attorney-General Smith—He does not nominate his successor.

Mr. McCandless stated that Dr. Miner had told him he was an annexationist. He thought in regard to McGurn that the Marshal should be informed as to the views of the Council.

Mr. Emmeluth said the Attorney-General and some others did not hear all that was said on the streets.

President Dole said the Executive Council were in full sympathy with the view that places should be filled with friends of the Government, when competent men could be obtained.

Attorney-General Smith said no one realized the difficulty in making satisfactory appointments. No matter whom he appointed, some one would raise his hair for it.

Mr. McCandless said the supporters of the Government were well satisfied with Attorney-General Smith's course. When mistakes had been made he had always been ready to rectify them.

The following bills passed their second reading:

Act 24—Relating to proceedings against corporations.

Act 25—Relating to jurisdiction of district magistrates.

Act 26—Appropriating $50,000, further expenses of the Provisional Government.

27—Relating to law of internal taxes.

In the Supreme Court of the Hawaiian Islands.

MARCH TERM, 1893.

KAWAI K. GEORGE VS. HANAKAULANI HOLT.

BEFORE JUDD, C. J., BICKERTON AND FREAR, JJ.

Where a former judgment is claimed as an estoppel, the record must show that the issue was the same in both cases and that the party claimed to be estopped is either the same or is in privity with the party in the former adjudication.

The principle of Keahi vs. Bishop, 3 Haw., 546, does not apply to the present case.

OPINION OF THE COURT PER JUDD, C. J.

At the July term, 1892, of this Court an action of ejectment was tried wherein Mrs. Hanakaulani Holt recovered of one Keolo (w.) a piece of land situate on Queen street, Honolulu, being a portion of the land described in Royal Patent No. 1730 to Kekuhaupio.

Thereafter one Kawai K. George brought an action of ejectment against Mrs. Hanakaulani Holt to recover possession of land under the same Royal Patent. The jury having disagreed at the October Term, 1892, the case came up for trial at the February Term, 1893, of the Circuit Court, First Circuit, Whiting, Judge, under the Judiciary Act of 1892. During the progress of the trial, Mr. A. Rosa offered in evidence for the defense the record in the case of Hanakaulani Holt vs. Keolo, numbered 3134, and requested the Court to charge the jury that "The question of the pedigree of the plaintiff Kawai K. George having been adjudicated upon in the case of Hanakaulani Holt vs. Keolo on the 13th July, 1892, before the Supreme Court of the Hawaiian Islands, the plaintiff cannot set up his claim in this case where it is based on the same claim, because he is estopped from doing so." This was refused and the correctness of the ruling is the question raised by the bill of exceptions, the jury having found a verdict for the plaintiff.

The main issue in the present case was whether Kamalo (the mother of defendant, Mrs. Holt) was the daughter of Kapu by Paele (w.), as claimed by defendant, or of some other man by Paele, as claimed by plaintiff. Both plaintiff and defendant claimed through the said Kapu, plaintiff's claim being that he was the grand-nephew of Kapu. If Mrs. Holt was the grand-daughter of Kapu, through Kamalo, she would take in preference to Kawai K. George, a grand-nephew. It was therefore essential to plaintiff's case to show not only his own relationship, but to disprove Mrs. Holt's.

On referring to the record in the case of Hanakaulani Holt vs. Keolo, No. 3134, we find that the declaration seeks to recover a portion of the land described in Royal Patent No. 1730 to Kekuhaupio, but the survey attached to the declaration and the one introduced in the case of Kawai George vs. Mrs. Holt differ, the former survey calling for 2020 square feet and the latter calling for 9158.7 square feet. But as the identity of the subject matter was not questioned, we may assume that the present suit is to obtain possession of all the land that was recovered by Mrs. Holt of Keolo and more, both surveys being for land originally granted by Royal Patent No. 1730.

We are asked to hold that the former suit between Mrs. Holt and Keolo settled conclusively the title of Mrs. Holt to the land, based upon her relationship to Kapu, and that it is now *res adjudicata* and cannot be questioned by Kawai George in his suit against Mrs. Holt. Counsel for Mrs. Holt says that Kawai George is a privy in estate with Keolo, Keolo being Kawai George's tenant by sufference. We are aware that a judgment between parties binds not only the parties, but those claiming under or through the parties, and therefore judgments conclude parties and privies in blood, in law and in estate. "All privies, whether in estate, in blood or in law, are estopped from litigating that which is conclusive upon him with whom they are in privity;" 1 *Herman, Estoppel and Res Judicata*, sections 139 and 145. But we are unable to apply this rule of law to the present case. In the first place, the plea of the defendant Keolo in the former adjudication was the general issue, merely denying all the allegations in the plaintiff's declaration. Secondly, the evidence is not set out in that case and there is nothing in the case to show how Keolo claimed to defend her possession, whether in her own right, or under Kawai George, or whether she set up a title by prescription.

The only feature that throws any light upon the matter is the evidence in the present case, page 34 of the stenographer's notes. Here Kawai K. George, plaintiff, in cross-examination, says that he sat in Court during the trial over this land between Mrs. Holt and Keolo, and gave evidence of his own pedigree, being a witness in behalf of Keolo, and gave his pedigree substantially as he gave it in the present case; and that his mother gave the same pedigree, and that the pedigree of Mrs. Holt to Kapu was also given at that trial, and that the result was a verdict for Mrs. Holt, giving her possession of the land. Now this may be all true, but, to establish an estoppel, the prior record must show the facts so that the Court can perceive the privity of the prior defendant with the present plaintiff. In this respect the record fails. We have nothing but the bare statement of adverse counsel that Keolo defended the action on the ground that she was the tenant by sufferance of Kawai George, whose title by inheritance she set up against Mrs. Holt's claim. And without expressing an opinion as to whether, if such was the fact, this would make Kawai George privy to the former action and estop his present claim, we do not find the estoppel *proved*, and so cannot sustain the exception. If the former judgment had been pleaded in bar the matter would have been presented to the Court in better shape.

The counsel for defendant refers us to the case of *Keahi vs. Bishop*, 3 Haw., 546, where the principle of law is adopted that "the adjudication of a question of descent or pedigree will be binding not only in the proceedings in which they take place, but in every other in which the same question is agitated, and the mode in which the question is brought before the Court is immaterial." By reference to the cases from which this principle is drawn it will be found that the adjudication must be in a Court of peculiar jurisdiction as Probate, Ecclesiastical or Admiralty Courts which have absolute jurisdiction over the subject matter and where their judgments, the proceedings being *in rem* or in the nature of proceedings *in rem*, are evidence against all the world of the matters adjudicated. See Bigelow Estoppel, p. 158 and cases cited.

This rule will not apply to judgments in cases between parties. Here the parties must be the same or privy thereto in order to bind them. In Castle vs. Noyes 14 N. Y. 332 cited by defendant's counsel, it was held that "an estoppel by judgment includes all parties who have a right to appear and control the action and to appeal from the judgment though not a party to the record." Kawai George was not a party in the former case and there is nothing in the record to show that he had a right to appear and to appeal from the judgment.

We are obliged therefore to hold that the Circuit Court committed no error in refusing to sustain the estoppel claimed, and the exceptions are overruled.

A. S. Hartwell for plaintiff; A. Rosa for defendant.

Honolulu, April 6, 1893.

GENERAL ARMSTRONG.

A letter from Tuskegee, Ala., from Mr. Booker Washington, and published in the Southern Workman, says:

"General Armstrong arrived here Saturday night, February 18, a little after midnight. The train was three hours late. The Tuskegee train made a special trip to Chehaw to meet him. Notwithstanding the lateness of the hour, the students and teachers had a very attractive and fine demonstration in his honor. It was something on the order of a torch-light procession; bonfires and brass band and singing intermixed. Instead of torchlights we had pinewood knots.

"The girls and boys formed a line through which he passed, and as the carriage drove through them each one waved a lighted piece of pinewood, the band playing 'Hail to the Chief.' The General enjoyed it all immensely and seemed very much overcome.

"But I write to you especially to say that General Armstrong surprised us all very much by speaking to our students and teachers in the chapel last night for thirty or forty minutes. I think most every one of us heard every word he said. It is very encouraging to him to know that he can speak to so large an audience."

The General himself writes to his paper that he has enjoyed a visit to the Calhoun school, and that he finds himself benefited by the pleasant weather and daily drives, as well as greatly interested in Tuskegee, where he will remain till after the dedication of its new "Phelps Training School for Pastors."

PATRIOTIC WOMEN.

They Object to the Wording of a Memorial.

The Hawaiian Women's Patriotic League held its third business meeting Wednesday morning at Arion Hall. Mrs. F. W. Macfarlane, President, called the meeting to order promptly at 10 o'clock. After reading the minutes by the Secretary, Mrs. Grace Kahalewai, the proposed memorial to United States Commissioner Jas. H. Blount was taken up. The Secretary read it once in Hawaiian, but the ladies in the rear part of the building could not hear her. They requested her to again read the rather lengthy memorial, which was done. The memorial was briefly in this wise:

To U. S. Commissioner JAMES H. BLOUNT;

Greeting: We, the members of the Hawaiian Women's Patriotic League, formed for the sole purpose of perpetrating the independence of Hawaii, a kingdom for whom our ancestors fought and bled in war, do hereby implore Your Excellency to recommend to your Government the restoration of our beloved Queen on the throne of Hawaii, and that the present stage should be brought to an end. The people of Hawaii have received you with a warm welcome, and it would be a deed of humanity on your part to grant the earnest and humble supplications of the patriotic women subjects of the sovereign of Hawaii nei.

Several of the elder women were dissatisfied with the wording, and especially the utter absence of the name of "Liliuokalani," on the memorial. Mesdames J. Kaae, G. W. Miles, M. Kaaepa, Mele Alapai, and a few others sternly opposed the literary construction of the memorial, as it seemed too undiplomatic to them.

The President explained that the word "Queen" written in the memorial meant Liliuokalani, as Hawaii has no other queen at present. An old woman replied: "You might place Kaiulani there; we want you to put Liliuokalani's name at the head." Mrs. Mele Alapai, of Unihipili fame, seconded the last speaker, maintaining, however, that Liliuokalani's name should properly come at the end of the memorial.

At this moment about ten or fifteen old women were on the floor crying for "Liliuokalani." Mrs. W. L. Wilcox ran across the building to the rear to explain to them the intention of the President. As there were more than twenty women speaking at once to her about "Liliuokalani," Mrs. Wilcox was necessarily obliged to yell to the house in order to be heard, but the twenty were determined not to hear her.

Mrs. Nakuina, interpreter, here explained the words of the President. The women called out for another reading of the memorial which was readily complied with. The rival contention for the insertion of Liliuokalani's name at the top of the memorial was again made. The old women became frantic as they thought the younger and more intelligent members were trying to rob them of their Queen.

"Put Liliuokalani at the top and we'll be satisfied," cried the chorus of women from the rear part of the building.

Mrs. Mele Alapai took the leading part for the Opposition. The discussion occupied nearly two hours without coming to a vote. Of the three or four hundred women present only about twenty wanted the name of Liliuokalani inserted.

At noon the President became weary and dismissed the meeting subject to her call.

Tahiti Notes.

From late papers it is learned that the new tariff which was intended to increase French imports to the exclusion of California products has not been found to work well, and the duties on flour, salmon, biscuits, salt beef, etc., have been reduced to the former rate—5 per cent.

The two pirates who murdered the crew and stole the schooner Niuroahiti, have been sent to France for trial. While in prison at Manila they facetiously asked the Governor to lend them a mandolin to break the monotony of prison life.

The pearl shell trade will get a set back, as the French Government will no longer permit the use of diving apparatus, and shells must now be procured by ordinary methods.

Business in the colony is in a very depressed state, owing to the low price of produce, and no change for the better may be expected for some time to come.